

SENATE BILL 2298

By Haun

AN ACT to amend Tennessee Code Annotated, Title 4; Title 54;
Title 55 and Title 67.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 54-5-802, is amended by deleting items (3) and (4) in their entirety and by substituting instead the following:

(3) "Public highway" means and includes any state highway forming a part of the interstate and defense highway system, or any other state highway or road, including extensions thereof within urban areas, constructed in part with state aid, and includes any incorporated or related physical facilities for the handling of traffic and the right-of-way;

(4) "Relocation" means and includes any horizontal or vertical movement of utility facilities intact and any protective measures taken or, where found by the commissioner to be necessary, the construction of new or additional facilities (with or without contemporaneous removal and salvage of old facilities) in this state, including in any case adjustment or protection of connecting off-highway utility lines to the extent necessary and all costs of engineering in preparation for, and during, such movement;

SECTION 2. Tennessee Code Annotated, Section 54-5-803, is amended by deleting subsections (b) and (c) in their entirety and by substituting instead the following:

(b) The obligations of the utility as defined herein shall be to make or suffer relocation as so required by the commissioner, and to do so cooperatively and in the reasonable manner and time as may be prescribed by the commissioner, and to advance and pay all costs incurred in effecting relocation which the state is not authorized to pay hereunder or otherwise by law. It shall not be grounds for delay in relocation that a dispute exists over the cost of relocation or the method of paying or the reimbursement of same.

(c) The commissioner shall enter into an agreement with a utility as defined herein with respect to any relocation, the time and manner of its accomplishment and the payment or reimbursement of the cost incurred in effecting relocation, all upon such reasonable terms and conditions as the commissioner shall approve as necessary or appropriate in the interest of a public highway program in this state; and in such event no notice, hearing or other proceeding under this part shall be required.

SECTION 3. Tennessee Code Annotated, Section 54-5-804, is amended by deleting the section in its entirety and by substituting instead the following language:

Section 54-5-804.

(a)

(1) Except as provided in subsection (b), the department shall pay a utility for the cost of relocation.

(2) The commissioner is authorized upon notice and opportunity for hearing to find and determine in relocations hereunder the cost of relocation, and the same shall, to the extent authorized herein, be borne by the state as other highway construction costs.

(b) The cost of relocation from which a utility would otherwise be relieved pursuant to subsection (a) shall nevertheless be borne in full by the utility in any of the following cases, without reimbursement from the state:

(1) In case of relocation of a utility facility for which local municipal or county government authorization, if required by law, had not been granted;

(2) In case the utility shall, after April 1, 1963, agree for a valid consideration to effect the relocation at its expense under the terms of such agreement; or

(3) In case of any required relocation with respect to which the commissioner shall reasonably determine that the utility failed without just cause to make or suffer such relocation in the reasonable manner and time as prescribed by the commissioner.

Any such utility shall repay any amounts paid by the department to the utility for the cost of relocation.

(c) The commissioner shall make no reimbursement payment to a utility to which it is otherwise entitled pursuant to subsection (a), unless and until the commissioner is satisfied that relocation has been fully completed in accordance with the commissioner's requirements; and the commissioner shall in no event make reimbursement of any cost otherwise due under subsection (a) which is found after notice and hearing, to have been unnecessarily, negligently or improvidently incurred by the utility.

SECTION 4. Tennessee Code Annotated, Section 54-5-806, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) The policy, principles, and reimbursement provisions of this part shall apply to any and all highway projects that have not been completed on July 1, 2002, even

though prior to July 1, 2002, the commissioner has required agreements with the affected utilities concerning any such relocation work. The commissioner is authorized and directed to amend any and all such existing agreements so as to conform to the provisions of this part.

SECTION 5. Tennessee Code Annotated, Section 54-5-855, is amended by deleting the section in its entirety and by substituting instead the following:

Section 54-5-855.

(a) Pursuant to § 54-5-804, the department shall pay or reimburse a utility subject to relocation under this part the cost of relocation.

(b) In the event the department does not notify the owner by certified mail of the approved plan and schedule of calendar days and date for beginning installation, relocation or adjustment within six (6) months after their submission, then the owner shall be allowed to submit a revised cost estimate, when applicable, which shall be incorporated into the utility relocation contract.

SECTION 6. This act shall take effect July 1, 2002, the public welfare requiring it.